

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

THE PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex. rel.</i> LISA MADIGAN,)	
Attorney General of the State of Illinois)	
)	
Complaint to suspend tariff changes submitted by)	
Ameren Illinois and to investigate Ameren Illinois Rate)	
MAPP pursuant to Sections 9-201, 9-250 and 16-108.5)	Docket No. 13-0501
of the Public Utilities Act)	
)	
)	
AMEREN ILLINOIS COMPANY)	
d/b/a Ameren Illinois)	Docket No. 13-0517, (cons.)
Revisions to its Formula Rate Structure and Protocols)	

**RESPONSE OF THE PEOPLE OF THE STATE OF ILLINOIS TO
AMEREN ILLINOIS COMPANY’S
RESPONSE IN SUPPORT OF COMMONWEALTH EDISON COMPANY’S
VERIFIED EMERGENCY MOTION
TO STAY ISSUANCE OF THE FINAL ORDER**

The People of the State of Illinois, by and through the Attorney General (“AG” or “the People”), pursuant to 83 Ill. Adm. Code § 200.190, hereby file this Reply to Ameren Illinois Company’s (“Ameren” or “AIC”) Response In Support Of Commonwealth Edison Company’s Verified Emergency Motion to Stay Issuance of the Final Order in this proceeding. The People already addressed the arguments in the Verified Emergency Motion to Stay Issuance of the Final Order (the “Motion to Stay”) filed by Commonwealth Edison Company (“ComEd”) in their Response filed July 2, 2014. The People file this Reply to address the arguments made by Ameren in its Response, many of which include misstatements of fact and/or law that must be corrected.

In support of this Reply, the People state as follows:

1. At page 2 of its Response, Ameren suggests that “Certainly, all parties to these dockets appear to agree the answer to the ‘formula rate structure or protocols’ question would affect ComEd as well as AIC. (Ameren Cross Ex. 1SH (response to data request AIC-Staff 1.36); CUB Init. Br. 12; ALJPO at 6 (noting “Staff’s intentions” that the outcome of this proceeding apply to ComEd).)” It should first be noted that Ameren did not cite any statement of the People of the State of Illinois – who are participants in both of Docket Nos. 13-0501/0517 (cons.) and 14-0316 – to this effect. The quotation at page 6 of the Proposed Order is based on Ameren Cross Exhibit 1SH, which is a copy of Staff’s response to data request AIC-Staff 1.36 in this proceeding. There, Staff stated that “Ms. Ebrey contends that her recommendations in this proceeding would be applicable to the Commission in implementing Section 16-108.5 of the Act with respect to both Ameren and ComEd.” Ms. Ebrey did not, however, suggest that *the outcome of this proceeding* should automatically bind ComEd in its annual formula rate updates (nor did the data request ask that); she merely suggested that her *recommendations* would apply *to the Commission* in applying Section 16-108.5 with respect to ComEd. While any result in this docket would presumably contain reasoning that the Commission could use in another docket presenting the same question, ComEd would have the opportunity to address the question in a separate docket should the issue be presented for application to ComEd.

2. At page 2 of its Response, Ameren suggests that ComEd “did not receive notice that the Commission might formally adopt an interpretation of a provision of EIMA until Staff mentioned Dockets 13-0501/13-0517 (cons.) in a motion to reopen the record in a ComEd proceeding concerning “housekeeping” changes to its formula rate.” Ameren makes the fatal error of taking the assertions in ComEd’s Motion to Stay at face value. In fact, as the People demonstrated in their Response to the Motion to Stay at page 8 and Staff demonstrated in its

Response to the Motion to Stay at pages 10-11, ComEd received actual notice of the bifurcated issues being considered for Ameren in this proceeding when Staff filed a “Notice of Common Issues” in Docket No. 13-0318 on December 2, 2013 and ComEd filed a “Statement” responding to Staff’s Notice of Common Issues two days later, on December 4, 2013. Thus, all the appellate cases emphasizing the importance of notice and due process cited by Ameren at page 2 of its Response are of little relevance.

3. At page 3 of its Response, Ameren states that “ComEd’s position is persuasive because the issue presented in this case is one of statutory interpretation, and since the statute applies equally to all entities regulated by it, any interpretation that the Commission makes will necessarily apply equally to all entities regulated by the statute. Any other result would be arbitrary and capricious.” However, as the People showed at page 6 of their Response to the Motion to Stay and Staff showed at pages 12-13 of its Response to same, the Commission has a long history of deciding the application of particular statutory provisions to individual utilities in separate proceedings, in the context of the law and of each respective utility’s facts and evidence. It is well established that Commission decisions have no *res judicata* effect, and the Commission has the authority to address each matter before it freely, even if the matter involves issues identical to those in a previous case. Illinois-American Water Co. v. Commerce Comm’n, 322 Ill. App. 3d 365, 368 (3rd Dist. 2001); Mississippi River Fuel Corp. v. Commerce Comm’n, 1 Ill. 2d 509, 513 (1953). Because the Commission has the power to deal with each situation before it regardless of how it may have dealt previously with similar or same situation, Citizens Utility Board v. Commerce Comm’n, 291 Ill. App. 3d 300, 307 (1st Dist. 1997), the assertion that a Commission Order in this docket will automatically apply to ComEd “arbitrarily and capriciously” is simply wrong.

4. At pages 3-4 of its Response, Ameren argues that “[a]n investigation or rulemaking proceeding in which both ComEd and AIC participate would eliminate the possibility of a due process violation by ensuring that both ComEd and AIC have an opportunity to participate in any docket that will result in a formal interpretation of EIMA, and simultaneously eliminate the possibility of arbitrary differences between the utilities in the application of the statute.”

As discussed above, ComEd had actual notice since at least December 4, 2013 (and possibly earlier) that the “bifurcated issues” in this proceeding were under consideration, so there will be no due process violation if ComEd is denied an opportunity to stay this proceeding. ComEd had actual notice of the proceeding, but chose not to participate. Moreover, if the Commission opens a separate investigation into the bifurcated issues as they apply to ComEd, or the issue of the scope of the Section 9-201 requirement in Section 16-108.5 arises in connection with ComEd’s formula rates, ComEd will have the opportunity to address the issues in that context.

5. At page 4 of its Response, Ameren argues that “Further, granting ComEd’s motion to stay will not prejudice any party. The statutory deadline for the Commission’s decision in this case is August 30, 2014. Oral argument in this case is not scheduled until July 30, 2014. Therefore, there is ample time for the Commission to address ComEd’s motion in Docket 13-0501 without difficulty for any party.” However, as the People noted at page 5 of their Response to the Motion to Stay, ComEd’s Motion to Stay does not just contemplate staying this proceeding pending the Commission’s determination of its Verified Expedited Motion To Open An Investigation Regarding The Definition Of Formula Rate Structure And Protocols in Docket No. 14-0316; ComEd openly advocates “wind[ing] down” this proceeding and beginning a new investigation of the bifurcated issues as they apply to *both* Ameren and ComEd. ComEd’s position would create “difficulty” for all parties in this case and result in a waste of the time and

resources of the Commission and the parties by discarding several months' worth of discovery, evidentiary submissions, and litigation.

6. At page 4 of its Response, Ameren states that "If there is a possibility that the Commission might open an investigation or rulemaking proceeding on the issues pending in this case (and AIC believes it should), any continued expenditure of resources by the parties or the Commission in the interim would be inefficient." In fact, the inefficiency would lie in the Commission choosing to "wind down" and toss away the bifurcated portion of this docket after several months of careful development. If there is a possibility that the Commission might open an investigation into the bifurcated issues as they apply to ComEd, the People will participate in that investigation as they have participated in the bifurcated portion of this docket. The possibility of an additional proceeding, however, does not justify dismissing a fully developed record that is poised for decision.

WHEREFORE, consistent with the arguments in this Reply and in their Response filed July 2, 2014, the People of the State of Illinois respectfully request that the Commission deny ComEd's Petition to Intervene, or, barring that, deny ComEd's Motion to Stay.

Respectfully Submitted,

The People of the State of Illinois
By LISA MADIGAN, Attorney General

_____/s_____
Susan L. Satter, Sr. Assistant Attorney General
Sameer H. Doshi, Assistant Attorney General
Public Utilities Bureau
100 West Randolph Street, Floor 11
Chicago, Illinois 60601
Telephone: (312) 814-1104
Fax: (312) 814-3212
Email: ssatter@atg.state.il.us
sdoshi@atg.state.il.us

July 11, 2014